

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

McWANE, INC., et al.,

Defendants.

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**CRIMINAL ACTION NO.
CR-04-PT-0199-S**

MEMORANDUM OPINION

For further reference with regard to the Count 25 “pending proceeding” issue, the court notes that in *United States v. Browning, Inc.*, 572 F.2d 720 (10th Cir. 1978), there was an investigation “proceeding.” Apparently, the defendant knew of the investigation and suggested that two companies give the investigators false answers. 572 F.2d at 723. Contrary to some “clarity” arguments made to the court, the *Browning* court stated: “The question before us as to the present meaning of the term “proceeding” is not so plain on its face as to lend itself to determination from the statute itself.” *Id.*

This 20th of April, 2005.



**ROBERT B. PROPST
SENIOR UNITED STATES DISTRICT JUDGE**